

*** THE HON'BLE Ms. JUSTICE G. ROHINI**

+ WRIT PETITION NO.19032 OF 1999

% 08/10/2007

1. B.E. Hanumantha Charyulu (Died)
2. B.E. Sreenivasa Charyulu
3. B.E. Raghavendra Rao
4. B.E. Krishna Murthy
5. Smt. B.E. Susheela Bai
6. B.E. Rama Prasad ... Petitioners

Vs.

\$ The Commissioner of Survey, Settlements & Land Records, now redesignated as Commissioner Of Appeals, Office of the Chief Commissioner, Land Administration, Station Road, Hyderabad-500 001., and two others. ... Respondents

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> Head Note:

! Counsel for the petitioners : Sri A. Rangacharyulu

^ Counsel for the respondents : Govt. Pleader for Revenue

Cases referred :

- NIL -

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19032 OF 1999

DATED: 08-10-2007

Between :

1. B.E. Hanumantha Charyulu (Died)
 2. B.E. Sreenivasa Charyulu
 3. B.E. Raghavendra Rao
 4. B.E. Krishna Murthy
 5. Smt. B.E. Susheela Bai
 6. B.E. Rama Prasad
- ... Petitioners

And

1. The Commissioner of Survey, Settlements & Land Records, now redesignated as Commissioner Of Appeals, Office of the Chief Commissioner, Land Administration, Station Road, Hyderabad-500 001., and two others. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19032 OF 1999

ORDER :

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_____ The petitioners herein are the land-holders of Buddepalli Inam Estate in Ananthapur District which was taken over by the Government on 3-7-1964. Consequent to introduction of settlement rates, the **Basic Annual Sum** and **total compensation** payable in respect of the estate were determined by the Director of Settlements as 'Nil' under Section 39 (1) of the Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Estates Abolition Act') vide proceedings date 18-6-1969. Appeal under Section 39 (5) of the Estates Abolition Act against the said order was dismissed by the Commissioner of Survey, Settlements and Land Records on 16-10-1979. The petitioners filed W.P.No.2165 of 1981 and this Court having allowed the writ petition, remanded the matter to the Director of Settlements to compute the income that could have been fetched during the relevant years. Though the Government carried the matter in Appeal to the Supreme Court, the same was dismissed by order dated 5-3-1991.

Thereafter, the matter was taken up for re-determination of compensation and by order dated 16-11-1991 the Director of Settlements called for a report from the District Collector.

Ananthapur. However, without waiting for such report, the Director of Settlements passed an order dated 13-8-1992 fixing the **Basic Annual Sum** and **total compensation** as Rs.74.22 ps and Rs.2,226-60 ps respectively under Section 39 (1) of the Estates Abolition Act.

Aggrieved by the same, the petitioners preferred an Appeal before the Commissioner of Survey, Settlements and Land Records contending primarily that the determination made by the Director of Settlements without waiting for the report of the Collector was arbitrary and illegal. The said Appeal was allowed by order dated 18-4-1994 and the matter was remanded to the Director of Settlements to refix the **Basic Annual Sum** and the **total compensation** as per the order of this Court in W.P.No.2165 of 1981 and after giving opportunity to the petitioners herein to produce the document in support of their claim.

Accordingly, though a fresh order was passed on 20.7.1996, the Director of Settlements had again fixed the **Basic Annual Sum** and **total compensation** as Rs.74.22 ps and Rs.2,226.60 ps respectively reiterating the earlier order dated 13.8.1992. The appeal preferred by the petitioners under Section 39 (5) of the Estates Abolition Act challenging the order dated 20.7.1996 was dismissed by the 1st respondent by order dated 2.1.1999.

Hence, this writ petition seeking a Writ of Certiorari to call for the records relating to the order of the 1st respondent, dated 2-1-1999, and to quash the same being arbitrary and illegal.

I have heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents.

For proper appreciation of the controversy involved, it is necessary to note some more details as under :

Under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948, the Government is liable to pay the compensation to the landholder whenever any estate is taken over by the Government. As per Section 39 of the Act the Director of Settlements, appointed under the Act to

carry out survey and settlement operations in the estates, shall determine the **Basic Annual Sum** in respect of the estate and also the **total compensation** payable in respect of the estate. Section 25 of the Act provides that the compensation shall be determined for the estate as a whole. Section 26 provides that a sum called **Basic Annual Sum** shall first be determined in respect of the estate and Section 37 specifies the scale of compensation with reference to such **Basic Annual Sum**. For instance, according to clause (i) of Section 37 of the Act where the **Basic Annual Sum** does not exceed RS.1,000/-, the compensation shall be thirty times such sum. Similarly, under clause (ii) if the **Basic Annual Sum** exceeds Rs.1,000/- but does not exceed Rs.3,000/-, the compensation shall be 25 times such sum or Rs.30,000/- whichever is greater. Clause (iii) of Section 37 provides that where the **Basic Annual Sum** exceeds Rs.3,000/- but does not exceed Rs.20,000/-, the compensation shall be 20 times such sum or Rs.75,000/- whichever is greater.

Sections 31 to 35 of the Act deal with determination of **Basic Annual Sum** for inam estate. Admittedly, Buddepalli is an inam estate and therefore the procedure prescribed in Sections 31 to 35 is applicable.

As per Section 31 of the Estates Abolition Act, in the case of an inam estate, the **Basic Annual Sum** shall be the aggregate of the sums specified in clauses (i) to (iv) thereunder less than the deductions specified in Section 35. The components specified in Section 31 included **gross annual ryotwari demand** and **average net annual miscellaneous revenue** in respect of the lands in an inam estate.

Whereas Section 32 of the Act provides for computation of **ryotwari demand** and deduction therefrom, the **net annual miscellaneous revenue** has to be computed in terms of Section 34 of the Act. Sections 32 and 34 which are relevant for the purpose of the present case may be extracted hereunder :

32. Computation of ryotwari demand and deduction therefrom:-

(1) The gross annual ryotwari demand in respect of the lands referred to in Section 31, clauses (i) and (ii), shall be the total of the ryotwari assessments imposed in pursuance of a settlement effected under Section 22 on the lands occupied by any person other than the landholder on the notified date.

.....

(2) From the gross annual ryotwari demand as computed above, there shall be deducted 3-1/3 per cent of such demand on account of the maintenance of irrigation works serving the estate.

.....

.....

34. Computation of net miscellaneous revenue:

The average net annual miscellaneous revenue from the sources referred to in Section 31; Clause (iv), shall be the average of the net annual income derived by the Government from such sources during the fasli year commencing on the notified date, if such date was the 1st day of July, or on the 1st day of July immediately succeeding the notified date, if such date was not the 1st day of July and the next two fasli years.

As could be seen from the above provisions, the **gross annual ryotwari demand** shall be the total of the ryotwari assessments imposed in pursuance of a settlement effected on the lands occupied by any person other than the landholder on the notified date.

So far as **net miscellaneous revenue** is concerned, it shall be the average of the net annual income derived by the Government from the sources referred to in Section 31 during the three Faslies subsequent to the notified date.

In the instant case, initially the **Basic Annual Sum** in respect of Buddepalli Estate was determined by the Director of Settlements as 'Nil'. Pursuant to the order of this court in W.P.No.2165 of 1981 though there was a re-determination, the Director of Settlements while fixing the **Basic Annual Sum** as Rs.74.22 ps. had only taken into consideration the net miscellaneous revenue and completely ignored

the annual ryotwari demand, the other constituent part under Section 31 of the Act. That apart, the Director of Settlements did not take the report of the District Collector, Ananthapur into consideration. In the circumstances, on appeal by the petitioners, the order of the Director of Settlements dated 13.8.1992 was set aside by the Commissioner of Survey, Settlements & Land Records and the matter was remanded to the Director of Settlements for re-fixation of the **Basic Annual Sum** and **total Compensation**.

Accordingly, a fresh order was passed by the Director of Settlements on 20.7.1996. However, the Director of Settlements did not accept the ryotwari assessment recommended by the District Collector and again concluded that the Ryotwari assessment was nil. Even with reference to the **net annual miscellaneous revenue**, the Director of Settlements refused to take into consideration the report of the District Collector dated 30.10.1992 on the ground that the miscellaneous income shown in the said report relates to the faslis 1371 to 1374 i.e., 3 years prior to abolition of the estate, whereas as per the order in W.P.No.2165 of 1981 the derivable income has to be worked out for the faslis 1375 to 1377. The Director of Settlements also expressed a doubt as to the veracity of the documents produced by the landholders in support of their income during 1371-F to 1374-F and concluded that the same cannot be relied upon to arrive at the derivable income during 1375-F to 1377-F. Accordingly, the Director of Settlements by order dated 20.7.1996 reiterated that the **Basic Annual Sum** and the **compensation** shall be Rs.74.22 ps and Rs.2,226.60 ps respectively as already determined in the earlier order dated 13.8.1992. The said order was confirmed by the 1st respondent in toto while dismissing the petitioners' appeal by order dated 2.1.1999.

Having heard the learned counsel for the petitioners as well as the learned Government Pleader in detail and having perused the material on record, I am of the opinion that the respondents

and 2 were not justified in determining the **Basic Annual Sum** as Rs.74.22 ps. disregarding the report submitted by the District Collector dated 30.10.1992. The said orders were not only contrary to the order of the Division Bench of this Court in W.P.No.2165 of 1981 but also against the factual findings recorded by the District Collector in his report dated 30.10.1992.

As noticed above, the **Basic Annual Sum** in respect of the estate forms basis for the **total compensation** payable to the landholders. For the purpose of determining the **Basic Annual Sum**, it is necessary to fix the **gross annual ryotwari demand** as well as the **average net miscellaneous revenue** as provided under Sections 31 to 34 of the Act.

The specific case of the petitioners is that as per Inam Fair Adangal prepared after the survey and settlement, the total ryotwari assessment was Rs.464.63 ps. Out of the same, a sum of Rs.139.05 ps has to be deducted being the assessment on the personal holdings of the landholders. Thus, according to the petitioners, Rs.325.58 ps being the balance ought to have been taken as **ryotwari demand** during the relevant years.

It is relevant to note that the Collector, Ananthapur in his report dated 30.10.1992 furnished the abstract of the area as well as the assessment on the occupied ryoti lands in accordance with the Inam Fair Adangal prepared after the survey and settlements. In the said report, the assessment on 542.28 acres of patta dry land was shown as Rs.408.78 ps. Accordingly, the District Collector recommended to fix Rs.269.73 ps as ryotwari demand observing as under :

“On the ryoti lands held by the ryots, pattas were confirmed under Section 11 (a) of the Act by the Estates Abolition Tribunal restoring Melavaram rights to the landholders and as such the assessment fixed in the survey and settlement will have to be taken as a constituent part of the income to be taken into account. Out of the total cultivable lands of the village, the landholders were also given pattas for the lands which were in their personal cultivation the extent of

185.25 acres and the assessment thereon works out at Rs.139.05 ps. This amount of assessment on the personal holdings of the landholders which they have to pay to the Government cannot be taken as an income to them. Hence, it is deducted from the total dry ryotwari assessment of Rs.408.78 ps and the remaining balance of Rs.269.73 ps will have to be taken as a component part of the income for working out the compensation under Section 31 (1) of the Act.”

As could be seen, the ryotwari demand claimed by the petitioners was substantially confirmed by the District Collector. The material on record also shows that after taking over the estate, the Government was also collecting Rs.325.58 ps from the ryots.

However, strangely both the respondents 1 and 2 declined to consider the recommendations of the District Collector on the ground that the pattas granted to the ryots by the Estates Abolition Tribunal being without jurisdiction cannot be relied upon.

Even assuming that the pattas are not valid for any reason whatsoever, the same cannot be a ground to disregard the assessments actually imposed and collected even after the estate was taken over by the Government. Hence, I am of the opinion that the alleged invalidity of the pattas is not a relevant ground for computation of ryotwari demand under Section 32 of the Act and therefore both the respondents 1 and 2 committed an error in holding the ryotwari demand as ‘Nil’.

So far as the other component of the Basic Annual Sum namely **average net annual miscellaneous revenue** is concerned, as held by the Division Bench in W.P.No.2165 of 1981 the factum of actual receipt cannot be the criteria but the income derivable or the income that could have been fetched should be the basis for computation of the net annual miscellaneous revenue under Section 34 of the Act. In W.P.No.2165 of 1981, the Division Bench having considered the meaning of the expression “derived” employed in Section 34 of the Act held that if the expression ‘derived’ is considered

in the sense of actual receipt of income, it is susceptible of being defeated altogether or denuded substantially by inaction or want of diligence on the part of the Government to take steps for deriving the income. While remanding the matter to the Director of Settlements to compute the income that could have been fetched during the relevant years, the Division Bench observed as under :

“The compensation for every estate taken over is obligatory and the question of not paying compensation is not visualized. After taking over the estate the Government is seized of the management of the vested lands and the computation of compensation depending upon the actual receipt of income during the regime of the Government is brought with tendencies of defeating the allied object of the Act to pay compensation. The inaction or lethargy or lack of attention on the part of the Government in marshalling the sources of income inevitably leads to nil or meager compensation. The Act cannot be attributed with the intention of payment of compensation dependent upon the mood of the Government. The Act is committed to pay compensation and the purpose of the Act cannot be permitted to be defeated by recourse to such interpretation. It may be that due to drought or other natural calamities there may not be any income at all during the period and on this score the compensation cannot be denied. Therefore, the factual of actual receipt cannot be the criterion and the reasonable approach is that the income derivable or the income that could have been fetched should be the basis.”

In terms of the above order, the Director of Settlements called for a report from the District Collector, Anantapur, furnishing the particulars of all the income during the relevant years. Accordingly, the District Collector, Ananthapur, on the basis of a factual report submitted by the Mandal Revenue Officer, Singanamala, furnished his report dated 30.10.1992 stating that since the income during the faslis 1375, 1376 & 1377 succeeding the notified date was already found to be nil, the miscellaneous income the landholders were getting during the three previous years namely 1372-F to 1374-F, when the estate

was still under their control was collected. After making diligent enquiries in the surrounding villages, and on verification of the details furnished by the landholders as well as the documents, the particulars of income was furnished by the District Collector in C1, C2 & C3 statements for the Faslis 1372, 1373 & 1374, according to which the **net miscellaneous revenue** during the three faslis prior to the notified date was shown as Rs.7,971.06 ps. A copy of the report of the Mandal Revenue Officer, Singanamala, wherein the factual position was explained in detail was also enclosed to the report of the District Collector, Ananthapur, dated 30.10.1992. The relevant portion from the report of the Mandal Revenue Officer, dated 10.8.1992 may be reproduced hereunder :

“On account of efflux of time, there are no records available at the Taluk or Mandal level. Hence, there is no possibility to over-check the particulars furnished by the land-holders with reference to any records of the Government. Further, the particulars being those pertaining to the period when the estate was still under the control of the land-holders, there cannot be any Government records available. The question that arises will be to examine whether the claim made by the land-holders and the records produced by them are genuine or not. In order to test the veracity of the claim made by the land-holders, I made diligent enquiries in the surrounding villages where the elderly ryots have confirmed that they were paying for the forest produce and stones and also for pasture to the land-holders year by year. Hence, it is not out of place to conclude that there is every grain of truth in the claim putforth by the land-holders and that may be taken as basis for working out the compensation for the estate village.”

The Mandal Revenue Officer also explained the reasons as to why the income derived during the regime of the landholders had become nil during the Faslis 1375, 1376 & 1377 soon after the estate stood transferred to the Government as under :

“The major source of income was from the unreserved land and a hillock existing in the estate now classified

as UAW measuring 430.95 acres. As soon as the estate was taken over in Fasli 1374, no agency was provided to look after the areas of income and therefore the thread broke down accounting for nil income in the three succeeding faslis of 1375, 1376 & 1377. Soon after the Government stepped into the shoes of the landholders, adequate arrangements should have been made to pick up the threads of income from the forest and hillock areas, in which case there would have been income of miscellaneous revenue during the relevant three fasli years also under the Government.”

From the above, it is clear that the major source of income was from the unreserved land and a hillock existing in the estate now classified as un-assessed waste. It is not disputed by the respondents that after the estate was taken over in 1374 fasli, no agency was provided to look after and maintain the said sources of income covering a vast extent of about 430 acres. The same must have resulted in complete loss of income from the land now classified as Un-Assessed Waste. In the circumstances, the District Collector has rightly fixed the net miscellaneous revenue on the basis of the income received by the landholders under different heads during the faslis 1372, 1373 & 1374 when the estate was still under their control. All the particulars of income were furnished in C1, C2 & C3 statements together with the copies of the relevant documents furnished by the landholders including receipt books and part diary maintained by them. There is absolutely no justifiable reason to suspect the genuineness of the said particulars and the doubt expressed by the respondent No.2 as to veracity of the lease deeds merely on the ground that they were executed on white paper is unwarranted.

Having regard to the fact that a vast extent of 430.95 acres was involved, I am of the opinion that the net average annual income recommended by the District Collector, Anantapur was neither exorbitantly high nor unreasonable. On the other hand, the method adopted by the Director of Settlements in taking into account the

income derived by the Government from the sources of erstwhile estate during the three faslis succeeding the notified date was not realistic and cannot be held to be in conformity with the directions of this Court in W.P.No.2165 of 1981. Though Section 34 of the Act provides that the net miscellaneous revenue shall be computed on the basis of the income derived during the three fasli years succeeding the notified date, having regard to the interpretation given by the Division Bench in W.P.No.2165 of 1981 to the word “derived”, which was also upheld by the Supreme Court, I am of the opinion that the District Collector was justified in taking into consideration the income derived by the landholders while the estate was under their control since the Government failed to maintain the sources of income after the estate was taken over in 1374-F. Having regard to the peculiar facts and circumstances of the case, the income actually derived by the landholders prior to the notified date must be taken as income that could have been fetched during the years succeeding the notified date.

For the aforesaid reasons, I find force in the submission of the learned counsel for the petitioners that the procedure adopted by the respondents 1 and 2 was not only arbitrary and illegal, but also contrary to the directions of this court in W.P.No.2165 of 1981.

In the result, the impugned order passed by the 1st respondent dated 2-1-1999 as well as the order of the 2nd respondent dated 20-7-1996 are hereby set aside and the Writ Petition is disposed of holding that the Basic Annual Sum shall be fixed as recommended by the District Collector in his report, dated 30-10-1992 both in respect of ryotwari assessment and the net annual miscellaneous revenue.

Accordingly, there shall be a direction to the 2nd respondent-Director of Settlements to re-determine the Basic Annual Sum and the compensation payable to the petitioners, after due notice to them, as expeditiously as possible preferably within a period of 3 months from the date of receipt of this order.

The writ petition is accordingly disposed of. No costs.

G. ROHINI, J.

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Dt. 08-10-2007.

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Note:- LR copy to be marked.

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